

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

BERNADINE T. GRIFFITH

Plaintiff,

v.

**ONEBEACON INSURANCE COMPANY,
ONEBEACON AMERICA INSURANCE
COMPANY, MICHAEL A. SISTO, and
KAREN ALLEN HOLMES**

Defendants.

C.A. No. 03-CV-12573-EFH

**DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO EXTEND TIME FOR
PRODUCTION OF THE EXPERT REPORT OF HARVEY S. WAXMAN, PH.D.**

NOW COME Defendants OneBeacon Insurance Company, OneBeacon America Insurance Company, Michael A. Sisto, and Karen Allen Holmes (collectively, "Defendants") in response¹ to Plaintiff Bernadine T. Griffith's ("Griffith" or "Plaintiff") Opposition to the Court's granting of Defendants' request for a twelve day extension of the time for production of the expert report of Harvey S. Waxman, Ph.D. ("Dr. Waxman").

Defendants state that both the Scheduling Order in this matter and Rule 26 of the Federal Rules of Civil Procedure mandate the exchange of an expert report upon one party's decision to

¹ Defendants style the instant motion as a "reply" for clarity's sake. Defendants note that because the Court has already granted Defendants' original Motion, Plaintiff should have moved the Court for reconsideration in lieu of filing an opposition. Should the Court treat Plaintiff's Opposition as a request for reconsideration, Defendants respectfully request that the instant "reply" serve as their opposition to a motion for reconsideration of the ten day extension.

have a report commissioned. *See* Scheduling Order; Fed.R.Civ.P. 26. In an effort to comply with Rule 26 and the Court's Scheduling Order, Defendants, at the request of Dr. Waxman, filed their original motion requesting an additional ten days for the fashioning of the report.

Defendants disclosed Dr. Waxman as a potential expert witness upon the May 2, 2005 filing of their Motion to Conduct Rule 35 Examination. *See* Defendants' Motion to Conduct Rule 35 Examination. Under the original Scheduling Order, Defendants' were not required to formally disclose Dr. Waxman or produce his report until Thursday, July 14, 2005. In granting Defendants' Motion to Extend Time for Production of Expert Report, the Court provided Defendants with ten additional days to disclose Dr. Waxman and produce his report.

By failing to disclose any expert prior to her May 15, 2005 deadline, Plaintiff has waived the right to produce an expert witness or commission an expert report in this matter. *See* April 2005 Motion to Extend Discovery, granted May 4, 2005.

WHEREFORE, Defendants respectfully request this Court maintain the extension of time by twelve days for production of Dr. Waxman's expert report, thereby maintaining the current deadline for production/disclosure of Tuesday, July 26, 2005.

Respectfully submitted,

ONEBEACON INSURANCE CO.,
ONEBEACON AMERICA INSURANCE CO.,
MICHAEL A. SISTO, and
KAREN ALLEN HOLMES

By their attorneys

/s/ Leah M. Moore
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Dated: July 13, 2005

CERTIFICATE OF SERVICE

I, Leah M. Moore, hereby certify that on July 13, 2005, I caused a true and correct copy of the foregoing to be served via first class mail upon Kathleen J. Hill, Esq., Attorney for Plaintiff, Law Office of Kathleen J. Hill, 92 State Street, Suite 700, Boston, Massachusetts 02109, being the address designated by said attorney for service of all pleadings.

/s/ Leah M. Moore
Leah M. Moore